



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF NEW
HAMPSHIRE

Petitioner

and

TOWN OF STRATHAM

Complainant

CASE NO. M-0729

DECISION NO. 96-058

APPEARANCES

Representing Teamsters Local 633 of New Hampshire:

Thomas D. Noonan, Business Agent

Representing Town of Stratham:

Robert R. Tawney, Chief Negotiator

Also appearing:

David D. Pierce, Stratham Police Department
Cameron Sewall, Town of Stratham Highway Dept.
Richard W. Wood, Stratham Police Department
Richard A. Gendron, Stratham Police Department
Michael Daley, Stratham Police Department
Paul R. Deschaine, Town of Stratham

BACKGROUND

On March 21, 1996, Teamsters Local 633 of New Hampshire (Union) filed a petition for the certification of a fourteen member bargaining unit to consist of the following six positions: lieutenant (1), corporal (1), full-time patrol officer (4), part-time patrol officer (4), police department secretary (1) and truck driver/equipment operator (3). On April 4, 1996, the Town of Stratham (Town) filed its objections to certification of the

unit alleging a lack of community of interest between the police department employees and highway department employees. The Town also objected to the inclusion of the police lieutenant position for supervisory reasons, RSA 273-A:8 II; the police department secretary for confidential reasons, RSA 273-A:IX (c); and part-time police officers because they are "on call" employees, RSA 273-A:1 IX (d). A hearing was held before the undersigned hearing officer on May 20, 1996, at which time the parties agreed to amend the petition to reflect promotions which had occurred since the filing of the petition. The bargaining unit at issue, by agreement of the parties, is as follows: lieutenant (1), sergeant (1), corporal (2), full-time patrol officer (2), part-time patrol officer (4), police department secretary (1) and truck/driver equipment operator (3). In addition to its prior objections, the Town now objects to the inclusion of the sergeant's position because of the supervisory nature of the position.

FINDINGS OF FACT

1. The Town of Stratham employs personnel in various departments such as the police and highway departments and thereby, is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Town police and highway departments are small departments with major responsibilities for public safety. "The primary responsibility" of highway department employees is the "safety of the traveling public." (Town #4) Both are part of the Stratham emergency team and receive Seabrook disaster training together, according to testimony of Cameron Sewall.
3. The same dispatch system is used by the police and highway departments. Direct contact is possible in the field should a weather emergency or severe accident occur. Both departments must be available in emergencies to work overtime regardless of holidays such as when a park building collapsed injuring many people.
4. There are differences in training and there are differences in working conditions. Police officers receive special training, such as training in the use of firearms. They are required to

wear uniforms. Highway department truck drivers must have commercial licenses to operate trucks on the road. The highway department employees work from 7:30 a.m. to 4:00 p.m., while police officers have rotating shifts. Similar to other Town employees, police officers work eight hour shifts.

5. Full-time employees of the Town have the same number of holidays, the same sick leave policy, the same health insurance and the same other benefits available under the Town of Stratham Personnel Plan and Hiring Policy (Union #1). Police officers have the additional benefit of a retirement plan through the state. All Town employees are governed by the same rules of conduct.
6. A cooperative feeling among Town employees was apparent during the hearing. There is regular interaction which centers around each department's involvement with conditions of and activity on the roadways. Fallen trees and Town vehicles which have gone off the road are removed by highway personnel at police department request. During a snow storm, the police department advises the road agent when plowing is necessary. When highway personnel come upon an auto accident, the police are summoned but the highway employees remain on the scene until the police arrive. The police department assists the highway department controlling traffic on the roadways when they are under repair and highway personnel assist with cruiser maintenance such as installing gun racks and lightbulbs.
7. A document entitled "1995 PART-TIME OFFICERS HOURS" was submitted by the Town. (Town #1) It gives the names of the part-time officers and the hours each has worked by the week. Testimony revealed that part-time officers remain in that status for a number of years and, when there is an opening for a full-time officer, a part-time officer is hired into that position. Such has been the case for five of the last six officers hired. There is no shift reserved for part-timers. Any shift that becomes open must be refused by the full-time officers before it can be

offered to part-time officers. According to testimony from Lieutenant Michael Daley, notice of special details is posted on the board and, if no full-time officer takes the detail, a part-time officer can sign up. During the first five months of 1996, 600 hours were worked by the part-time officers. Officer Hutchings has worked more time than any other part-timer and has been on the part-time officer roster since 1988 or 1989. The least senior part-time officer has been on the roster for two years.

8. The secretary who works for the police department types reports for all members of that department and not for the chief alone. According to Corporal Gendron, the secretary is a sworn civilian who has the same degree of access to confidential files, such as files on juveniles, as do police officers who must keep many matters confidential. This position acts as matron and as dispatcher on occasion.
9. The position of lieutenant included in the petition has special responsibilities for investigation. He acts in the chief's stead in an emergency or when the chief is on vacation but the position does not otherwise have significant supervisory duties. Corporal Gendron testified that he never has seen the lieutenant act in an administrative capacity on a day to day basis. Memos are issued by the chief and come through the sergeant. The lieutenant had no role in hiring Corporal Gendron two years ago and took no observable role in the most recent hiring of a part-time officer who became a full-time officer. Neither did he approve the recent promotions undertaken by the Selectmen when he was acting chief for the five month period beginning in October, 1995, and ending, after the filing of the petition in question, about three weeks before the hearing. The job description of the lieutenant/detective position makes no mention of significant supervisory duties.
10. Sergeant Wood schedules the hours of work for the patrol officers and supervises their work on a day to day basis. He consults with the chief on policy matters such as whether additional part-time officers should be hired. Chief Michael Daley testified that

both the sergeant's position and the lieutenant's position may issue warnings, verbal and written, and both have the authority to recommend that a written reprimand be sent by the chief. Neither the lieutenant nor the sergeant has a role in the evaluation process but evaluations have not taken place in the past two years. The lieutenant is paid at a substantially higher rate than patrol officers. The fact that he may at sometime be required to discipline officers may pose a conflict should the lieutenant be added to the bargaining unit according to Chief Daley. However, there is no testimony that the lieutenant disciplines officers and direct discipline is not among the responsibilities stated in the job description for this position. (Town #2)

DECISION AND ORDER

RSA 273-A:8 places authority for determining the composition of bargaining units with the Public Employee Labor Relations Board. The principle of community of interest is to be considered in examining on the facts of each case as they bear on the positions at issue. The ultimate question is whether there exists a mutuality of interest in working conditions such that it is reasonable to expect employees to be able to negotiate jointly. University System of New Hampshire v. State of New Hampshire, 117 N.H. 96 at 100 (1977).

The hearing record made by the parties in this case favors a bargaining unit inclusive of police officers and members of the highway department of the Town of Stratham. A strong community of interest was expressed through testimony. While it is true that some facts weigh against a joint unit of these two entities, the scale is tipped toward a joint bargaining unit. Facts weighing against such a unit are the special training received by the police, their uniforms including guns, access to the New Hampshire Retirement System and round the clock scheduling.

However, the degree of integration of tasks and concerns is substantial. Especially convincing is the mutual focus of these two small departments on monitoring and dealing with highway and traffic related matters on a day to day and on an emergency basis. They have dual responsibility for the conditions of and safety on the roads. In addition, both groups of employees work for the same employer under the same personnel plan. Vacation,

sick and bereavement leaves are the same. Discipline and grievance procedures are the same. They all work eight hours shifts and they have the same number of holidays. Both are subject to mandatory overtime and may be required to adjust schedules to accommodate weather and other emergencies. They contact each other to make everyday or emergency requests over the same Town frequency or by a common dispatch arrangement.

The four part-time police officer positions are properly included in the proposed unit. While there is no shift reserved to be scheduled for part-time officers, there remain four clearly identified part-time officer positions. Officers have been tested and hired to fill these positions. Officers who hold those positions have done so for years. Most full-time officers began as part-time officers. The names of the part-time officers are known and each officer's presence is relied upon for department operation. They are regular part-time officers and this small department couldn't function without them to cover shifts. These positions are not guaranteed a certain number of hours but they have a reasonable expectation of their positions continuing. Keene State College Education Association v. State, 119 N.H. 1,3 (1979).

The position of lieutenant detective does not exercise significant supervisory discretion. The job description for detective/lieutenant indicates only general supervision as exercised by any shift leader. In addition, he does specialized detective work which requires that he supervise and control activity at a crime scene but not that he perform administrative functions. The position second in command to the chief, notwithstanding the nomenclature used, is that of sergeant. No evaluations have been done for some years so the lieutenant is not involved with evaluations. While the lieutenant may recommend, it is selectmen and the chief who hire. The chief disciplines and promotes. The chief's administrative decisions are carried out by the sergeant. There was no evidence that this pattern of responsibility will change. The sergeant is excluded from bargaining unit membership because he supervises members of the bargaining unit. The detective/lieutenant position is included.

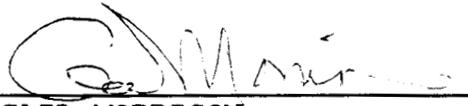
The secretary who works for the police department is not excluded. Based on testimony this position is not in any way a confidential position as the term is used in the statute. The police department secretary must keep confidential the same type of material kept confidential by officers such as the names of

juveniles involved in cases. She is not in a confidential working relationship with someone who will make labor relations decisions or who will be negotiating contracts, such as Town Administrator Deschaines.

The unit to be certified shall consist of the following thirteen positions: lieutenant (1), corporals (2), full-time patrol officers (2), part-time patrol officers (4), police department secretary (1), truck/heavy equipment operators (3).

So ordered.

Signed this 23rd day of July, 1996.

A handwritten signature in cursive script, appearing to read "G. Morrison", written over a horizontal line.

GAIL MORRISON
Hearing Officer